

Remarks to the Mid-Winter Meeting
of the New Hampshire Bar
Association
February 15, 2007

In the brief time I have with you this afternoon I want to close the loop on remarks I made last year at the mid-winter meeting about the need for the courts, the Bar and the Legislature to “step up” to address the unmet legal needs of the poor. Since last February, I have met with almost all the managing directors of the state’s thirty largest law firms to explore how they and their colleagues could help.

I also met with the current and past presidents of the Bar, the officers and board of the New Hampshire Trial Lawyers Association and with many members of the New Hampshire Chapter of the American College of Trial Lawyers.

I asked for their help and their ideas. I asked them, as I asked all of you a year ago, to accept the challenge of being number one in the United States, as a Bar, in assisting the poor. While your history is proud, we still have a ways to go.

More recently, over the last several months I, along with Ginny Martin, visited approximately eighteen law firms selected at random to make a more personal plea for assistance. I can assure you I didn’t do that because I have nothing on my desk; I did it because the pro se challenge confronting the courts and the profession is the most important issue on my desk. I – and more importantly – my plea for help was warmly received. I thank you for that and I believe the needle has begun to move. Keeping it moving is the real challenge.

Let me tell you what I asked the firms I visited to do, because today I am asking all of you to do the same:

- If you don’t have a formal, written pro bono policy please adopt one and follow it.
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- Tell Ginny Martin at the pro bono office what you or your law firm are willing to do for pro bono at the beginning of each calendar year so she does not have to call “hat in hand” and so she can intelligently plan.
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- Donate a modest portion of one lawyer’s time in your firm for one year to serve as a part of a four- or five-member SWAT team composed of other lawyers in your community or geography. The SWAT team would become “expert” in an area of law of value to New Hampshire Legal Assistance – and could handle conflicts and overflow.

At Devine, Millimet this past year, thanks to the leadership of Alex Walker, the firm has its own in-house SWAT Team, available on twenty-four hours notice to handle landlord and tenant cases that legal services lawyers cannot handle. It is my hope that other large law firms would adopt the Devine model. While that is not

possible for many of you, I would like you to consider forming inter-firm SWAT Teams to share the burden. With your help, we can keep the needle moving.

I asked several of the law firms I visited to donate one lawyer to participate as part of a six- to eight-person Director's Roundtable for a period of one year. Each year the group would have different faces. It would participate in a bi-monthly telephone conference with John Tobin of New Hampshire Legal Assistance to see how the firms individually or collectively could share the load – from drafting pleadings, doing legal research and legal memoranda, to meeting with legal services lawyers to share expertise, to assisting at trial or in discovery and to co-counseling in impact cases.

I asked the Fellows of the American College to offer their counsel, expertise and trial talents and through the good offices of Marty Van Oot and Jim Wheat active discussions, I understand, are now underway with John Tobin. I am hopeful that something very positive will come from that dialogue.

During my visits, I asked law firms to credit pro bono time as part of the expected yearly billable hour threshold. Anything less devalues the importance and discourages the involvement in the ethical imperative to assist the poor.

At last year's meeting I announced that New Hampshire had joined a handful of states to authorize the unbundled delivery of legal services. I hope many of you will participate and respond favorably when the Bar invites you to be listed on a register of lawyers who are willing to provide such services. The goal is to inform potential clients of the opportunity the rule permits and to furnish them the names of lawyers willing to participate for a fee. Lawyers always add value. We need more of you in our courtrooms, not fewer.

We have infused virtually all district courts with mediation services for small claims cases since last I spoke with you. The results are very promising and I am hopeful we can expand mediation on a regular basis to other types of cases in the district courts. I am also hopeful, as a result of the work of the ADR Committee chaired by Justice Dalianis last year, that after public and bar input later this year we will institute an ADR Program in the superior court based largely on the successful model used in the State of Maine.

In our budget for the next biennium we have asked for \$137,500 in each year to create a permanent office of Judicial Branch ADR. I expect that within a few years the office will be largely self-funding through modest registration and transaction fees.

Just a week ago the first meeting of the New Hampshire Access to Justice Commission was held. The Commission has a diverse forty-person membership and is co-chaired by Justice Duggan and Chief Judge McAuliffe of the Federal District Court. It is in search of systemic and practical solutions to meeting the legal needs of

the poor. I encourage you to pay close attention to its work, share your ideas and help it succeed.

Next Wednesday, I will have the opportunity to speak to a joint session of the New Hampshire Legislature. The Speaker of the House and the Senate President were kind enough to invite me to deliver a State of the Judiciary Address as I did two years ago. I gratefully accepted. Be assured, I will be talking to the Legislature about the pro se challenge to the effective and efficient administration of justice. We will need even more help going forward to ensure that access to justice for the poor as well as the middle class is meaningful.

It has occurred to me that if we had a health care system where, when poor people visited emergency rooms without insurance, they were told that they could review illustrated medical texts, diagnose their own problems and perform their own surgeries, we would find that system immoral. Somehow, when people confront life-altering civil problems in our courtrooms, as happens everyday, without the wisdom of a lawyer, we have come to believe that is acceptable. It's not or at least it shouldn't be.

One of the recommendations made by the 100-member Citizens Commission appointed by the Supreme Court in April, 2005 – two-thirds of whom were non-lawyers and non-judges – was the recognition of a civil Gideon for the poor threatened with the loss of shelter, sustenance, safety, health and custody of a child. These are our fellow citizens and all of us, whether in private life or public service, should listen carefully. Certainly, it would be costly but marching in place has its own costs and consequences.

When I was last in Washington in November, I attended an event at the Supreme Court. I noticed that night, as I always do, the inscription "Equal Justice Under Law" above the front portal. In my many years as a trial lawyer and during my service as a judge, I have always wondered whenever I read that lofty phrase or when others recite it whether it represents commitment or merely aspiration, promise or possibility.

I have always believed that justice is not a commodity but a birthright – something fundamental to human dignity and to our social contract as a republic. I have come to realize, however, that each generation of lawyers and judges – indeed all citizens – are responsible for giving it meaning, definition and life in their own time. This is our time. On our collective watch and consistent with our professional and deeply personal commitment to the rule of law we should, through our conduct and our advocacy, make the least among us confident and secure that our courthouses and our justice system are truly theirs as well as ours. To accept less, in my view, is a subtle yet indefensible abdication of our responsibilities and represents a gentle willingness to undermine the near-sacred mission of our Constitution. Let's never do that. Thanks for listening and thanks for your help.